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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: FERNIE et al
SERIAL NO.: 09/986,050
FILED: October 22, 2001
TITLE: PATIENT TRANSFER DEVICE
GROUP ART UNIT: 3628
EXAMINER:

RECEIVED

APR 04 2002

GROUP 3600

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

March 4, 2002

Dear Sir,

INFORMATION DISCLOSURE STATEMENT

Under their duty of disclosure, the Applicants wish to inform the Examiner of certain documents and other information the Applicants are aware of and which may be considered pertinent to the examination of the merits of the invention.

The Applicants also wish to bring to the Examiner's attention, the prior art that was cited in the parent application under serial number 09/420,648 filed October 19, 1999 and serial number 08/964,999 filed November 5, 1997. Applicants enclose three PTO 1449 Forms disclosing the prior art cited in those applications by both the Applicants and by the Examiner. The Applicants are relying on the guidance from the MPEP, namely section 2001.06(b), which indicates that the same prior art from a parent application need not be submitted on a later child application. Also enclosed is a copy of the four documents not previously submitted in any related IDS submissions: DE 111449, WO 00/27333, US 2,272,778 and WO 96/33687.

Applicants also enclose a copy of an International Search Report that has issued on the corresponding PCT application.

The submission of any document or other information herewith, which is not a statutory bar, is not intended as an admission that such document constitutes prior art against the claims of the present application, nor is considered to be material to patentability as defined in 37 C.F.R. 1.56 (b). Applicant does not waive any right to take any action which would be appropriate to antedate or otherwise remove as a competent reference any document which is determined to be a prima facie prior art reference against the claims of the present application.

Respectfully Submitted,

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2001.06(b) Information Relating to or From Copending United States Patent Applications

The individuals covered by 37 CFR 1.56 have a duty to bring to the attention of the examiner, or other Office official involved with the examination of a particular application, information within their knowledge as to other copending United States applications which are "material to patentability" of the application in question. As set forth by the court in *Armour & Co. v. Swift & Co.*, 466 F.2d 767, 779, 175 USPQ 70, 79 (7th Cir. 1972):

[W]e think that it is unfair to the busy examiner, no matter how diligent and well informed he may be, to assume that he retains details of every pending file in his mind when he is reviewing a particular application . . . [T]he applicant has the burden of presenting the examiner with a complete and accurate record to support the allowance of letters patent.

See also MPEP § 2004, paragraph 9.

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Accordingly, the individuals covered by 37 CFR 1.56 cannot assume that the examiner of a particular application is necessarily aware of other applications which are "material to patentability" of the application in question, but must instead bring such other applications to the attention of the examiner. For example, if a particular inventor has different applications pending in which similar subject matter but patentably indistinct claims are present that fact must be disclosed to the examiner of each of the involved applications. Similarly, the prior art references from one application must be made of record in another subsequent application if such prior art references are "material to patentability" of the subsequent application.

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Normally, if the application under examination is identified as a continuation or continuation-in-part of an earlier application, the examiner will consider the prior art cited in the earlier application. The examiner must indicate in the first Office action whether the prior art in a related earlier application has been

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reviewed. Accordingly, no separate citation of the same prior art need be made in the later application: